

is intended to be, and what effect it possibly might have on the market, so that under these circumstances the market can continue, and there is no necessity of holding up trading even for a temporary period of time.

I think this is the problem to which we are directing ourselves.

Mr. STUCKEY. Would the gentleman yield for one short time.

I think the two statements by Chairman Cohen and you, Mr. West, really clarify it because I think the past shows that we have not had any trouble with stock for stock offers.

Mr. COHEN. We have.

Mr. STUCKEY. Basically it has been fairly smooth.

Mr. COHEN. The reason for that is that there is an advance filing with the Commission and the materials are scrubbed up before they are actually used.

Mr. STUCKEY. But we are talking about two completely different situations, where with the cash for the stock offer we have had some problems, and I appreciated the two statements in bringing out the difference in basically what we are dealing with here. But basically over a period of time there has not really been too much of a problem as far as the SEC has been concerned with stock for stock.

Mr. COHEN. I think Mr. West at the very end really put his finger on it. We are not insisting on the 5-day provision because we want to have the first look at it. I think this business about rumors is beside the point. There always have been rumors and the clippings that the chairman introduced earlier today I think will make eminently clear that it is true today even when there is no SEC in the picture. I think that our concern really stems from our sensitivity that the Government should stay out of involvement in these contests as much as possible. We recognize that if materials are filed and we have to take exception to them this is embarrassing to the people who used them and, therefore, may interfere with an objective consideration of the merits by the shareholders. That is all that is involved.

If it is felt that the people who do these things should suffer whatever consequences flow from whatever they file, so be it. We just did not want the Commission to be in the position perhaps of compelling changes or going to court because once you do that no matter how well you qualify what you are doing it is going to be used by the other parties as an argument that "The Government is against you." This is the reason why the Commission hesitates, unless no other course is possible, to go to court on these situations. That is why in the present proxy rules which relate to as important matters as this, mergers, consolidations, reorganization and recapitalizations which are very, very important from a dollar point of view to all investors, there is a requirement that material be filed with us before it goes to the public.

Mr. MOSS. Mr. Keith.

Mr. KEITH. I would like to ask the triumvirate here just briefly the answers to these two questions. How often are these matters informally discussed with the SEC? Prior to their actually—

Mr. COHEN. When it is a stock for stock exchange offer it is always discussed with the SEC. In a cash tender offer there is no discussion. If it has happened, it has not come to my attention.

Mr. KEITH. The attorneys doing this kind of business.